IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jogendra Singh. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 843/2006
against the order dated 24-5-2006 passed
by the Additional Sessions Judgd, Rajgarh,
district Churu, in Sessions Case No.34/2004.
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Date of Order: September 05, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.S. Rathore, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Issue notice for final disposal. Mr. Ashok Upadhyaya, Public Prosecutor, accepts the notice. With the consent of the learned counsel for the parties, the petition is being heard and decided at the admission stage.

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 24-5-2006 passed by the Additional Sessions Judge, Rajgarh, district Churu (for short, "the trial Court" hereinafter), whereby the application

filed by the accused-petitioner under Section 73 of the Indian Evidence Act in Sessions Case No. 34/2004 was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

The petitioner filed an application before the trial Court stating therein that the prosecutrix PW 1 had written certain letters to the petitioner who is facing trial for the offence under Section 376 IPC. When those letters were put to the prosecutrix as EX.D/1 to EX.D/13, she denied to have written such letters and, therefore, in the interest of justice, the prosecutrix may be directed to give her specimen hand-writing so that the hand-writing of the prosecutrix may be compared and examined with the hand-writing on the letter EX.D/1 to EX.D/13 by handwriting expert. Learned counsel for the petitioner has relied on a decision of this Court in Ramdev Vs. State of Rajasthan, 2006(1) Cr.L.R. (Raj.) 594, wherein, on identical facts, this Court directed the trial Court to direct the prosecutrix to give sample of her handwriting in slow speed and to send the same to the FSL at Jaipur for its opinion and not to proceed further in the trial till the said report is received by the Court.

The trial Court dismissed the application requiring the prosecutrix to give her specimen handwriting only on the ground

that the if the specimen handwriting of the prosecutrix is taken in the Court then the Court itself would become a witness to the case. There can be no reason for the Court to become a witness in the matter. While conducting the case, if the prosecutrix is asked to give her specimen handwriting for the purpose of comparison, in my view, it cannot be said that it would occasion to failure of justice; on the contrary, to secure the ends of justice, in the peculiar facts and circumstances of the case when the petitioner has categorically came with the case that the letters EX.D/1 to EX.D/13 were written by the prosecutrix, which the prosecutrix has denied, therefore, in order to arrive at a just conclusion as to whether the letters were written by the prosecutrix or not, the specimen handwriting of the prosecutrix deserves to be taken so that the same may be compared with the handwriting on the letters EX.D/1 to EX.D/13.

Sub-section (2) of Section 73 of the Evidence Act provides that the Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. Keeping in view the provision of sub-section (2) of Section 73 of the Evidence Act, in my view, the trial Court fell in error in dismissing the application filed by the petitioner.

In the result, the criminal miscellaneous petition is

allowed. The impugned order dated 24-5-2006 passed by the trial Court is set aside and the matter is remanded to the trial Court to proceed in accordance with the provision of sub-section (2) of Section 73 of the Evidence Act.

(H.R. PANWAR), J.

mcs